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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. CLAGETT ELESTON RAINS, Defendant and Appellant.	H043479 (Monterey County Super. Ct. No. SS150978)

Defendant Clagett Eleston Rains appeals from a judgment entered upon his negotiated guilty plea to possession of a firearm by a felon, a violation of Penal Code section 29800, subdivision (a)(1).[1] The conviction arose from an encounter with police on June 8, 2015. On that day Nick Borges, a police patrol supervisor for the Seaside Police Department, was on patrol when he saw defendant standing next to a motorcycle. Defendant was not one of the people Borges recognized in the area, so he approached defendant and "asked him how he was doing." Borges noticed that the front tire of defendant's motorcycle was partially blocking a residential driveway, facing the wrong direction on the one-way street. Borges asked defendant if he lived in the area or knew someone who did; defendant answered that he was meeting a friend in that general area. Borges asked to see defendant's identification, and defendant complied. While conversing, Borges noticed a bulge created by something wrapped in a yellow towel in

[1] All further statutory references are to the Penal Code except as otherwise indicated.

defendant's vest. Concerned about the possibility of a concealed weapon, he asked defendant what was in the towel. Defendant said it was a pair of motorcycle gloves; Borges was suspicious, however, because defendant was already wearing motorcycle gloves. Borges told defendant that he was going to issue him a citation for the parking infraction, and he asked several times if defendant had any weapons. Defendant appeared nervous at that point and repeatedly raised his hand toward the bulge as if he had something illegal he was hiding. Borges also noticed a clip on the outside of defendant's right front pants pocket; the officer suspected that it was a pocket knife, as he carried his own in a similar location. Defendant pulled out the knife and handed it to the officer.

At that point Borges thought there might be additional weapons, so he performed a pat-down search of defendant—with effort, as defendant appeared to be resistant to the search. With the assistance of two other officers Borges restrained defendant. He asked defendant why he was behaving in that manner, and defendant said that he did have a gun on him. The pat-down revealed that the bulge in defendant's vest was a loaded Glock 21 .45-caliber handgun. Borges then arrested defendant for being in possession of a loaded firearm. A search incident to the arrest yielded a glass pipe containing white residue.

Defendant was charged by information with possession of a firearm by a felon (count 1, § 29800, subd. (a)(1)), carrying a concealed firearm on his person (count 2, § 25400, subd. (a)(2)), and possession of an injection/ingestion device (Health & Saf. Code, § 11364, subd. (a), a misdemeanor)). The complaint further alleged that defendant had previously suffered multiple strike convictions, within the meaning of section 667, subdivision (d), and section 1192.7, subdivision (c), and that he had served a prior prison term, within the meaning of section 667.5, subdivision (b).

On November 19, 2015, the trial court heard and denied defendant's motion to suppress the evidence found on him during the search. Defendant thereafter pleaded guilty to count 1, the firearm possession charge, and the remaining two counts of the

complaint were dismissed. On March 29, 2016, the court sentenced defendant to the agreed term of four years in prison, consisting of the midterm of two years, doubled for the strike conviction. Although he had waived his appellate rights at the time of the plea,[2] defendant then filed this appeal from the judgment. The appellate record does not indicate that the court ruled on defendant's request for a certificate of probable cause.

Discussion

Appellate counsel has filed an opening brief raising no issues and asking this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We advised defendant of his right to submit written argument on his own behalf within 30 days. He submitted a timely letter brief asserting an unconstitutional search and ineffective assistance of counsel for trial counsel's failure to file a motion to suppress evidence and failure to file a motion under *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497 (*Romero*). He also appears to be arguing that he should have obtained a reduction of his firearm possession offense to a misdemeanor under Proposition 47, the Safe Neighborhoods and Schools Act. (See § 1170.18, subd. (a).)

We find no ground for reversal. First, in accepting his negotiated plea defendant waived "all rights regarding state and federal writs and appeals. This *includes, but is not limited to, the right to appeal my conviction, the judgment,* and any other orders previously issued by [the trial] court. I agree *not to file any collateral attacks* on my *conviction or sentence* at any time in the future." (Italics added.) Second, his trial attorney did file a motion to suppress evidence, but it was denied, and even if the issue were not within the scope of defendant's appellate waiver, we would find no error in the court's ruling. As to counsel's failure to move to dismiss defendant's strike under

[2] Significantly, defendant's appellate waiver in the waiver and plea agreement was not a general waiver, but a specific waiver that applied to any direct or collateral attack on the sentence or judgment.

Romero, we see no indication from this record that the representation he received fell below an objective standard of reasonableness under prevailing professional standards. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 (*Strickland*); *People v. Cain* (1995) 10 Cal.4th 1, 28.) " ' "Reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a 'strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.' " [Citation.] "[W]e accord great deference to counsel's tactical decisions" [citation], and we have explained that "courts should not second-guess reasonable, if difficult, tactical decisions in the harsh light of hindsight" [citation]. "Tactical errors are generally not deemed reversible, and counsel's decision-making must be evaluated in the context of the available facts." ' " (*People v. Jones* (2003) 29 Cal.4th 1229, 1254.)

Nor did the alleged deficiencies subject defendant to prejudice—that is, a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*Strickland*, *supra*, 466 U.S. at p. 694.) A reasonable probability means a "probability sufficient to undermine confidence in the outcome." (*Ibid*.) Not only does the record contain no evidence that defendant fell outside the spirit of the three strikes law, but he received exactly the sentence he bargained for, rather than the eight years he could have received on count 1 but for the plea agreement. In light of this agreement and his criminal record,[3] we cannot see a reasonable probability that defendant would have received a lower term than four years if counsel had made a *Romero* motion.

Finally, defendant's suggestion that he should have been entitled to a reduction of his crime to a misdemeanor is not well taken. Possession of a firearm by a felon is not

[3] Defendant's adult criminal record includes six felonies, consisting of burglary, grand theft, and robbery.

among the offenses making an offender eligible for resentencing under section 1170.18, subdivision (a).

In addition to considering the arguments set forth by defendant in his letter brief, we have also conducted an independent review of the record pursuant to *Wende*, *supra*, 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, and we have concluded that there are no arguable issues on appeal.

Disposition

The judgment is affirmed.

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ELIA, ACTING P.J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.

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